

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Aaron Allen,)	
)	
Plaintiff,)	Civil Action No. 8:21-cv-2619-TMC
)	
vs.)	
)	
Aimee J. Zmroczek, Esq.,)	ORDER
)	
Defendant.)	
)	
)	
)	

Plaintiff Aaron Allen, a pretrial detainee proceeding *pro se* and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 3, 8). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. Now before the court is the magistrate judge’s Report and Recommendation (“Report”), recommending that the court summarily dismiss this action without leave to amend and without issuance and service of process. (ECF No. 9). The Report was mailed to Plaintiff at the address he provided the court, (ECF No. 10), and has not been returned as undeliverable. Therefore, Plaintiff is presumed to have received the Report. Plaintiff was advised of his right to file specific objections to the Report, (ECF No. 9 at 7), but failed to do so. The time for Plaintiff to object to the Report has now expired, and this matter is ripe for review.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party

makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.”” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). Thus, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 Advisory Committee’s note). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal the district court’s judgment based upon that recommendation. *See Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017).

Thus, having reviewed the Report and finding no clear error, the court agrees with, and wholly adopts, the magistrate judge’s findings and recommendations in the Report (ECF No. 9), which is incorporated herein by reference. Accordingly, this case is **DISMISSED** without leave to amend and without issuance and service of process.¹

¹ This action constitutes a “strike” pursuant to the PLRA based on Plaintiff’s failure to state a claim. *See* 28 U.S.C. § 1915(g) (“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”); *see also Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724–25, 207 L. Ed. 2d 132 (2020) (noting “[a] strike-call under Section 1915(g) ... hinges exclusively on the basis for the dismissal, regardless of the decision’s prejudicial effect[,]” such that the three-strike rule applies equally to dismissals without prejudice); *Westfall v. Tichnell*, Civ. A. No. GJH-20-271, 2021 WL 2434432, at *4 (D. Md. June 15, 2021) (dismissing claim against plaintiff’s attorney

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
September 9, 2021

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

pursuant to § 1915, because attorney was not a state actor for purposes of § 1983 liability); *McNeill v. Jordan*, No. 5:08-CT-3040-FL, 2008 WL 5561032, at *2 (E.D.N.C. June 17, 2008) (dismissing claim as frivolous pursuant to § 1915(e)(2) where claim was asserted against defendant who was not acting under color of state law when the alleged acts occurred).